

June 17, 1998

Dear :

Upon review of the papers submitted in the matter entitled *P.K. on behalf of R.K. v. Board of Education of the Morris Hills Regional School District, Morris County, Manuel E. Deus, Board Secretary, James McNasby, Superintendent and Barry Spetter, Principal*, Agency Dkt. No. 149-5/98, I have determined to grant the Board's Motion for Summary Decision and to dismiss the Petition of Appeal, pursuant to my discretionary authority under *N.J.A.C. 6:24-1.9*.

In the instant matter, petitioner contends that the Board is unfairly banning her from attending Project Graduation, a social event for seniors which takes place after graduation ceremonies. Petitioner attributes the ban to her having twice been suspended from school this semester, initially for what the Board views as her involvement in a food fight, and later for attending a party where there was alcohol, prior to the start of school on a day when the opening was delayed.

As to these events, petitioner admits only to throwing "one thing" at the food fight which occurred on February 4, 1998, when "****the food was flying and [she] was pelted with food." (Petition of Appeal at p. 4) She adds, "I did not take aim at anyone and had thrown it in frustration at being covered with food and food still hitting me from all directions." (*Id.* at p. 4) Petitioner served a three-day suspension for this incident, but maintains that she was unfairly targeted and punished. (*Id.* at p. 5)

With respect to the drinking incident, petitioner avers,

I was with a friend who said there was a party at a fellow [senior's] home prior to school. It was a stupid decision I made to accompany the friend to this party. There was alcohol at the party. I admit that I took a small sip of an alcoholic drink while at the party.***

Some students reported to school in a drunken condition. I was not drunk and did not have more than a small sip of the drink.***

I was called into the office and was asked to blow into a straw. I admitted before I blew into the straw that I consumed alcohol that morning. I was therefore suspended from school for three days. *** I was told there would be additional punishment for me because I was

involved in the food fight. *** A few days later I was told I would not be permitted to attend 'Project Graduation.' *** (*Id.* at pp. 6, 7)

Petitioner maintains that “***it is unfair for the principal to continue to punish [her] for something she never did in the first place.” In this regard, she argues that she is being punished twice for the same offense which, she affirms, the U.S. Constitution does not permit. (*Id.* at p. 7)

The Board argues that the material facts in this matter are not in dispute. It points out that, in her petition, R.K. “***admits to throwing food during a food fight on February 4, admits to drinking alcohol prior to school on April 21 and admits failing a breathalyzer test on April 21.” (Board’s Reply at p. 1) The Board underscores this State’s strong policy against the use of alcohol and drugs, citing *R.F. et al. and L.H. et al. v. Board of Education of Park Ridge, Bergen County*, 93 N.J.A.R. 2d (EDU) 79 (1992), aff’d State Board 416, wherein the Commissioner dismissed a Petition of Appeal from students who were barred from participation in year-end events, including the graduation ceremony, for drinking champagne in a limousine on the way to the prom. In the present matter, the Board maintains that

[t]he right of a school district to deny a student the right to participate in a school sponsored activity after having violated school rules is well established. Participation in graduation ceremonies or extra-curricular activities is a privilege separate and distinct from a pupil’s mandated entitlement to a thorough and efficient education. *** A board of education may withdraw the privilege in the interest of preserving an orderly and safe school. (Board’s Reply at p. 1) (Citation omitted)

In response to the Board’s Motion for Summary Decision, petitioner asserts that there are facts in dispute, in that she did not admit to participating in the food fight. (Petitioner’s Reply to Motion at p. 2) Additionally, petitioner asserts that she is the only senior being barred from Project Graduation, and maintains that this punishment represents an overreaction by the administration to the food fight. (*Id.* at 4)

Upon review, I concur with the Board that this matter is ripe for summary decision in that *material* facts are not in dispute. By petitioner’s own account, she threw food during the food fight.¹ Additionally, she forthrightly admits to attending a party before the start of school one day where alcohol was being served, and to consuming alcohol, albeit, as she claims, by virtue of a mere “sip.”

It is well established “*** that actions of local boards of education which lie within the area of their discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.” *J.M. v. Hunterdon Central Regional High School District*, 96 N.J.A.R. 2d (EDU) 415, 419, citing *Kopera v. West Orange Bd. of Education*, 60 N.J. Super. 288 (App. Div. 1960). Thus, it is petitioner’s burden to prove, by a preponderance of credible evidence, that the Board’s decision to ban her from Project Graduation was unreasonable, based on the facts. *Kopera, supra*. Even assuming petitioner’s version of these events is true, she makes no allegations which would substantiate a claim that the Board’s action in suspending her for these violations was, on its face, arbitrary and capricious. Petitioner’s assertion that such punishment runs afoul of the U.S. Constitution is entirely misplaced.

¹ Petitioner states, “I admitted that I had thrown one thing.” (Petition of Appeal at p. 4) Although she argues that the single food item she threw was merely out of frustration, and she did not “take aim,” these facts need not be relevant to administrators of the Board who were apparently attempting to quell a disturbance and to discipline students for their open defiance of authority. (See attachment to Board’s Answer)

Moreover, the Board's actions must be reviewed in the context of prior decisions which have consistently held that participation in extracurricular activities, such as the one at issue herein, is a privilege, which can be revoked for infraction of school rules or failure to act in accordance with Board policy. Indeed, R.K.'s status as a high school student does not afford her the legal entitlement to participate in any extracurricular activities. *Martin A. Domacasse v. Board of Education of the North Warren Regional School District, Warren County, State Board of Education* decision dated April 17, 1996, citing *Camden City Board of Education v. NJSIAA*, Docket #A-2802-91T2 (App. Div. 1992); *Burnside v. NJSIAA*, 1984 S.L.D. 1696 (App. Div. 1984), *cert. denied*, 101 N.J. 236 (1985).

Accordingly, the Petition of Appeal is hereby dismissed. The Board's decision to deny R.K.'s participation in Project Graduation activities on the basis of her disciplinary record is upheld.²

Sincerely,

Leo Klagholz
Commissioner

² This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.